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**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE NORTHERN DISTRICT OF TEXAS  
 DALLAS DIVISION**

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT FUND  
 ADVISORS, L.P.,

Defendant.

Adv. Proc. No. 21-3004-sgj

Case No. 3:21-cv-00881-X

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

NEXPOINT ADVISORS, L.P., JAMES  
 DONDERO, NANCY DONDERO, AND  
 THE DUGABOY INVESTMENT TRUST,

Defendants.

Adv. Proc. No. 21-3005-sgj

Case No. 3:21-cv-00881-X

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

Adv. Proc. No. 21-3006-sgj

VS.

HIGHLAND CAPITAL MANAGEMENT  
SERVICES, INC., JAMES DONDERO,  
NANCY DONDERO, AND THE DUGABOY  
INVESTMENT TRUST,

Case No. 3:21-cv-00881-X

Defendants.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

Adv. Proc. No. 21-3007-sgj

VS.

HCRE PARTNERS, LLC (n/k/a NexPoint Real Estate Partners, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST,

Case No. 3:21-cv-00881-X

Defendants.

**ERRATA TO  
DECLARATION OF JOHN A. MORRIS IN SUPPORT OF PLAINTIFF’S OMNIBUS  
MOTION (A) TO STRIKE CERTAIN DOCUMENTS AND ARGUMENTS FROM THE  
RECORD, (B) FOR SANCTIONS, AND (C) FOR AN ORDER OF CONTEMPT**

Highland Capital Management, L.P., the plaintiff in the above-captioned adversary proceedings (the “Adversary Proceedings”) and the reorganized debtor (“Highland” or the “Plaintiff”), hereby submits this errata (the “Errata”) to **Exhibit 1** attached to the *Declaration of John A. Morris in Support of Plaintiff’s Omnibus Motion (a) to Strike Certain Documents and Arguments from the Record, (b) for Sanctions, and (c) for an Order of Contempt* (the “Declaration”) and respectfully states as follows:

1. In Exhibit 1 attached to the Declaration, Highland inadvertently redacted footnote 79. The correct redaction should be to footnote 76.
2. Accordingly, Exhibit 1 shall be deemed superseded and replaced with amended Exhibit 1 (“**Amended Exhibit 1**”), attached hereto as **Exhibit A**, which redacts footnote 76.

*[Remainder of Page Intentionally Blank]*

Dated: February 18, 2022

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-and-

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*/s/ Zachery Z. Annable*

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**EXHIBIT A**

## **EXHIBIT 1**



the HCRE Term Note pursuant to the respective oral SSAs are genuine issues of material fact.<sup>76</sup> Moreover, as discussed in greater detail below, Plaintiff failed to remind HCMS of prepayments that had been made that relieved it of the obligation to make any additional payment in 2020.

## **E. Prepayment on the Term Notes**

### **1. NexPoint's Prepayments**

29. NexPoint asserts the affirmative defense of prepayment on the NexPoint Note, which relieved NexPoint of any obligation to make any additional payment in 2020. Thus, the NexPoint Note was not in default when no payment was made on December 31, 2020. NexPoint demonstrates *infra* that there is evidence supporting this affirmative defense and summary judgment denying this affirmative defense is inappropriate as a matter of law.

30. There is no dispute of fact that, between March and August of 2019, the following payments were made on the NexPoint Note (collectively, the “NexPoint Prepayments”): (i) \$750,000.00 on March 29, 2019; (ii) \$1,300,000.00 on April 16, 2019; (iii) \$300,000.00 on June 4, 2019; (iv) \$2,100,000.00 on June 19, 2019; (v) \$630,000.00 on July 9, 2019; and (vi) \$1,300,000.00 on August 13, 2019.<sup>77</sup> These payments totaled \$6,380,000.00 in 2019.<sup>78</sup> The normal December, 2019 payment of principal and interest on the Note would have been \$2,273,970.54, leaving \$4,106,029.46 remaining to apply as prepayments on the Note.

31. None of the aforementioned payments were scheduled payments or payments on arrears.<sup>79</sup> Rather, they were prepayments since the Plaintiff needed money and asked NexPoint to transfer it funds for liquidity purposes, which NexPoint did.<sup>80</sup> These transfers were intended by

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<sup>77</sup> Pl. Ex. 200, Amortization Schedule, Pl. Appx. 03249.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Def. Ex. 1, J Dondero Dec., ¶ 42, Def. Appx. 21.